



**SUBMISSION**

The undersigned was appointed as Fact Finder in this dispute, pursuant to written notice to the Fact Finder dated November 7, 2013. A Collective Bargaining Agreement is in full force and effect between the City of Newark, Ohio ("City" or "Employer") and the Fraternal Order of Police/Ohio Labor Council, Inc. (Licking County Fraternal Order of Police, Lodge No. 127) ("FOP" or "Union"), and is hereinafter referred to as the "Agreement." The express terms of the Agreement state that the Agreement ended on December 31, 2013, but the Parties appear to have agreed to continue honoring its terms, pending this Report and Recommendations of the Fact Finder.

The City of Newark Police Department ("Police Department") serves approximately 47,500 citizens and is responsible for providing safety services on a City-wide basis. The City of Newark covers 19.7 square miles within Licking County, Ohio.

This case involves one (1) Agreement which includes two (2) bargaining units represented by the FOP. Segment A represents those individuals who have completed their probationary period and are employed full-time in the classification of "Police Officer", and Segment B represents all sworn officers holding a supervisory position with the exception of the Chief of Police. Segment A is currently comprised of 54 Police Officers. Segment B is comprised of 15 Supervisory Officers.

There are also 18 civilian employees in the Police Department which are represented by the American Federation of State, County, and Municipal Employees. They are not subject to this proceeding.

Prior to the Fact-Finding session of March 28, 2014, the parties engaged in Interest Based Bargaining with the assistance of SERB mediators. Formal bargaining sessions were held on subsequent dates with the final session on February 7, 2014.

On March 28, 2014, the Parties met in the City of Newark, Ohio, Water Department Offices for a Fact Finding Hearing. At the Fact Finding Hearing, the Union withdrew its proposals concerning Article 2 – Recognition, Article 9 – Negotiations, Article 14 – Office Coordinator, and Article 17 –, Grievance/Arbitration Procedure. The City withdrew its proposal concerning Article 26. The Parties agreed that the current contract language for those provisions would remain.

The Fact Finder heard argument and admitted evidence submitted by the Parties on the following issues for both bargaining units:

Article 24 – Wages

Article 27 – Longevity

Article 28 – Uniform Quartermaster

The Parties agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder ("Fact Finder Recommendations") as provided under Ohio Administrative Code Rule 4117.260. The Parties also agreed to waive overnight delivery of the Fact Finder Recommendations and agreed to delivery of the Fact Finder Recommendations by electronic mail only.

In presenting the Fact Finder Recommendations, the Fact Finder has given full consideration to all reliable information relevant to the issues, and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **CITY'S ABILITY TO PAY**

The City has raised the issue of its inability to pay and, as this issue sets forth the City's position with respect to the three economic issues remaining to be decided in this proceeding, it will be addressed initially.

The City of Newark is not prosperous and its financial condition is not prosperous, although it appears that its financial condition may be improving slightly.

The City safety forces are paid out of the General Fund. The General Fund reached its peak in 2007 at \$30,480,439. Since that time, the General Fund has declined steadily to \$26,788,766 in 2013 and a projected \$25,739,926 in 2014. The decline has resulted in many fewer City employees, mostly resulting from a reduction in non-safety forces, reduction in services and elimination of City services.

The City has a 1.75% income tax, 0.5% of which is dedicated to safety forces. This equates to approximately \$2 million in tax revenue out of an \$8.2 million budget for the Police Department and another \$2 million in revenue for the Fire Department out of another \$8.2 million budget for fire. The City schools have an additional 1% income tax, for a total of 2.75% income tax for City residents, which appears to be greater than any comparable City. The City maintains that with this combined rate it is not feasible or logical to have an increase in income tax. User fees already exist, such as EMS fees, and they are used to offset costs for the Fire Department; vehicle license plate fees offset the expenses of repairing and maintaining roadways and bridges. The City asserts that further increases in taxes or user fees to offset the decline in revenue are not feasible.

The City appeared to have achieved moderate total tax growth in 2002 through 2006, when the City collected \$20,337,123 from all taxes in 2006. The next two years saw a 0.41% and a 1.41% increase in tax revenues. In 2009, the City experienced a -8.83% growth rate with total tax revenues falling to \$18,880,102. Tax revenues have increased since 2009, although they have not recovered to 2008 levels. Total tax revenue for the first three quarters in 2013 compared with the same period in 2012 shows a -1.07% tax growth rate.

Like other state local governments, the City has been impacted by the decrease of Local Government Funding and the elimination of the Estate Tax. The City has experienced the reduction of Local Government Funds of over 1.3 million, from \$2.4 million in 2008 to \$1.1 million in 2013. Estate Tax income dropped \$1.1 million in 2007 to \$19,000 in the 2014 budget, and no further estate tax will be collected for estates filed in 2013 or later. Interest income has diminished from \$819,000 in 2001, to \$74,000 in 2013.

The City has experienced several years of deficit spending. In 2010, the City had a \$1.3 million carryover, which represents a 4% carryover. However, the City Auditor had to transfer funds from other sources, such as the EMS fees, in order to balance the budget and create this carryover.

The City has been able to avoid any additional layoffs in the past two years due to the cuts previously made, the partial suspension of certain economic items in the various union contracts, and the reduction in force by attrition in the safety forces and reductions in civilian positions. In 2010, there were 81 uniformed Police Officers, and now there are 70. Budgets for all General Fund departments have been reduced. The relative share between the General Fund department budgets has remained relatively stable. That is, all General Fund departments have had comparable reductions. Capital improvements budgets have been reduced. The projections for General Fund revenue in 2014 and beyond portend further decline. Non-bargaining unit employees have not had pay raises.

The demographic and tax base of the City has not declined. Over 44% of the residences in the City are rental. The Adjusted Gross Income per household and other benchmark comparisons demonstrates that the City is in an inferior position to other similarly sized cities in the approximate geographic region and beyond.

While the population in the City increased from 2000 to 2010, the population living in poverty increased to 21.3% in 2012, from 20.2% in 2009. Food stamp recipients increased from 13,803 in 2008 to 31,705 in 2013 in Licking County (City residents are not similarly tracked).

The Adjusted Gross Income for tax returns filed in the City was \$23,625 in the year 2000, \$22,265 in 2008, and declined to \$21,576 in 2011, based on the most recent available

information. The Median Household Income shows a decline from 2009 at \$39,541 to 2012 at \$38,024 a reduction of \$1517 or -3.8%. The City has the third largest decline of the 13 comparable cities, of which five cities had increases, as did the State of Ohio

Median home values in the City declined between 2009 in 2012 by - 1.3%. While comparable cities declined more, the City's median home value in 2012 was \$114,000, which was below eight other comparable cities and the Ohio (\$133,700) and national (\$181,400) averages.

Housing unit permits and values authorized by governments as well as business starts have all declined since 2003. This long-term trend predates the recession and is a result of the shift in the nature of the work and workforce in the City from manufacturing to service and warehousing.

The Union does not dispute this analysis. However, the Union notes that the Police Department, beginning in 2009, returned money to the general fund every year. It notes that the largest return was in 2011, at 9.8% of the overall budget, and the amount returned in 2013 was 2.7% of the budget. The Union asserts that these reflect value judgments and that the Police Department has historically, since at least 2009, had amounts left over in its budget which could fund the Union's proposals. The Union also notes that significant amounts of EMS fees are collected and that those funds have been used to eliminate General Fund deficits and could be a source of funding for its proposals.

The City does not dispute that the Police Department had returned funds at the end of each year since 2009 but asserts that every department is expected to have unexpended amounts that roll over to the next year. The City argues that it necessary for the City to make the required payments from the General Fund at the beginning of each year prior to the majority of the tax revenues for that year being received. The City notes that the Government Finance Officers Association recommends a carryover fund balance in the General Fund of two months or approximately 17% and that the City has been short of that recommendation each year since 2001. The City maintains that it has been carrying over less than it should.

Thus, it is concluded that the finances of the City, although problematic, have been slowly improving from the 2009 recession levels. However, they are a significant consideration when evaluating the parties' economic proposals.

## **ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS**

The issues are described and resolved as follows:

### **ARTICLE 24** **WAGES**

**City Proposal:** The Employer proposed a 0% increase in 2014, and a reopener each year in 2015 and 2016. The City relies on its economic arguments asserted above. The City also argues that bargaining unit employees are well situated when compared to similar jurisdictions within the general geographic area. It submitted comparables showing the wages for Police Officers for the Cities of Portsmouth, Circleville, Lima, Chillicothe, Zanesville, Mount Vernon, Elyria, Mansfield, Heath, Lancaster, Marion and Marysville. It states that these Cities are comparable in age, composition, and economic demographics. These included the maximum salary, plus longevity and pension pick up. They showed the City of Newark third from the top with total wages of \$60,424.00, with the average of the 13 totaling \$55,362.16. Entry salary alone for Police officers, at \$35,963.20, was 7<sup>th</sup> out of the group of 13, and the City's starting salary was greater than the average of \$35,792.19.

**Union Proposal:** The Union modified its wage proposals at the Fact Finding hearing to propose a 2% increase in each of the three years of the new contract. Its arguments are based on the fact that the Police Department returned monies to the General Fund each year since 2009, and the recent history of the City is to utilize funds from the EMS fees to replenish the General Fund balances. The Union also notes that the City represents that the budget allocations of the Fire Department and the Police Department are treated the same for purposes of the total budget.

However, it argues that the Fire Department is ahead of the Police Department and not treated the same in that regard.

**Recommendations of the Fact Finder:** It is recommended that the wages for the bargaining unit not be increased for 2014, and that wages be increased by 1% effective January 1, 2015, and increased by 1.5% effective January 1, 2016.

The City has not established that it has an inability to pay for the entire three year term of the new agreement. It appears that the City's finances are improving, albeit slightly. It is noted that the City has access to certain of the EMS fees and has utilized those funds when necessary to balance the General Fund. It is also noted that the Police Department has returned money to the General Fund every year since 2009. While these do not indicate that the City can support raises in every year of the contract, the same may be considered to support increases in 2015 and 2016.

Finally, the recommended increase takes into account the other recommendations in this report.

The recommended increases for Article 24 - Wages, are set forth in the attached Addendum B, and incorporated herein by reference.

### **ARTICLE 27** **LONGEVITY**

**Union Proposal:** The Union proposes an increase on each step of the longevity stipend. The Union proposes that: for the 5<sup>th</sup> through 9<sup>th</sup> year of continuous service the longevity stipend be increased from \$0.21 to \$0.43 per hour; for the 10<sup>th</sup> through 14<sup>th</sup> year of continuous service the longevity stipend be increased from \$0.27 to \$0.48 per hour; for the 15<sup>th</sup> through 19<sup>th</sup> year of continuous service the longevity stipend be increased from \$0.35 to \$0.55 per hour; and that beginning the 20<sup>th</sup> year of continuous service the longevity stipend be increased from \$0.43 to \$0.61 per hour. The Union states that the longevity has not been increased for the Union since 2003. The Union argues that this would move them closer to the longevity stipend of the IFF in the City. The Union cites the longevity stipend from the Cities of Heath, Ohio and Westerville,

Ohio as being significantly higher than for the City. The Union notes that the longevity pay for the City of Westerville is significantly higher but the Union could not say if it was the result of a negotiated trade in lieu of something else.

City Proposal: The City proposes to maintain the current language. The City relies on its financial arguments asserted above.

**Recommendation of the Fact-Finder:** The Fact Finder recommends that the current contract language be retained as the state of the record does not support a modification of the language of Article 27 at this time. It is noted that the requests by the Union would exceed the current longevity pay of the IFF in the City. Further, the City of Heath, offered by the City as a comparable on this issue, has a significantly smaller police force including only 19 Police Officers in 2012 and their maximum salary plus longevity for Police Officers was significantly lower at \$54,385.07 compared to that of the City Police Officers at \$60,424.00. There was no information in the record about the City of Westerville but it is observed that the City of Westerville is located significantly closer to Columbus and benefits from that location. Given the financial position of the City and the other recommendations in this report a modification of Article 27 is not warranted.

## **ARTICLE 28** **UNIFORM QUARTERMASTER**

City Proposal: The City proposes maintaining through the period of this agreement the modified amount of \$625 per year which was implemented for the expiring agreement. The City states that the impact of the increases proposed by the Union will have to be absorbed by reductions in other personnel or General Fund expenditures. The City notes that the collective cost of the Union's proposal is over \$43,000.00 per year and will have an immediate and direct impact on the availability of funds for payroll and insurance costs. It asserts that the Union has not indicated that the current amount is insufficient to address needs. The City points out that although the Union has asserted that the quartermaster allowance has already been restored by

the operation of the language of the prior Fact Finder's report which was accepted by the parties, the Fact Finder still may consider retroactive proposals as the parties have agreed to retroactivity when they executed the extension agreement. The City notes that the Fact Finder in the Fire Department negotiations continued the reduced amount for the Fire Department union contract with only a gradual restoration in the last 2 years of the fire contract. The City proposed maintenance at the prior level for fire. The proposal here is for the continuation of the current \$625 level.

Union Proposal: The Union proposes that the language of Article 28 remain the same. It notes that the language of the Agreement states:

Section 28.1.1 For years 2012 and 2013, the \$1,250 figure in paragraph 28.1 will be reduced to \$625. At the end of 2013, this paragraph (28.1.1) expires and the \$1,250 in paragraph 28.1 will become effective again.

The Union argues that the reduction to \$625 was only for a two year period and was specifically set to expire at the end of 2013. The Union argues that the City accepted this recommendation of the Fact Finder *In the Matter of Fraternal Order of Police Lodge No. 127 and City of Newark, 10-MED-08-0986, et al., May 20, 2011, Fact Finder Daniel G. Zeiser* and that this provision became a part of the 2011-2013 Agreement through its acceptance by the parties. The Union notes that Fact Finder Zeiser specifically stated that "the Quartermaster fund will be temporarily reduced by half, to \$625, for calendar years 2012 and 2013." The Union emphasizes the word "temporarily".

**Recommendation of the Fact-Finder:** It is recommended that the Quartermaster payment be increased to \$750 for 2014, that it be increased to \$850 in 2015, and that it be increased to \$950 in 2016. This Fact Finder is not bound by the temporary reduction recommended by Arbitrator Zeiser and included in the 2011-2013 Agreement, as it is this Fact Finder's responsibility to review the parties' proposals based on the current information available. Based on an analysis of that information, and given the wage increase recommended, to require the City to return to the \$1250 amount in this three year period is not warranted or appropriate given the City's financial

condition. Further, the record did not establish why the quartermaster's payment would be a different amount paid to the Fire Department as compared to the Police Department. Therefore, the levels set forth *In the Matter of the Fact Finding Between IAFF Local 109 and The City of Newark, Ohio, SERB Case # 13-MED-10-1401, Fact finder Robert G. Stein, dated February 5, 2014* will be utilized. The parties will have an opportunity negotiate an appropriate amount in the next round of negotiations. The following language is recommended to be deleted (crossed out) and added (italics) for Article 28.1.1

~~Section 28.1.1 For years 2012 and 2013, the \$1,250 figure in paragraph 28.1 will be reduced to \$625. At the end of 2013, this paragraph (28.1.1) expires and the \$1,250 in paragraph 28.1 will become effective again.~~

*Section 28.1.1 For year 2014, the \$1,250 figure in paragraph 28.1 will be reduced to \$750. For the year 2015, the \$1,250 figure in paragraph 29.1 will be reduced to \$850. For year 2016, the \$1,250 figure in paragraph 28.1 will be reduced to \$950.*

**MATTERS PREVIOUSLY AND TENTATIVELY AGREED TO,  
AND MATTERS NOT ADDRESSED IN THE RECOMMENDATIONS ABOVE**

**Recommendation of the Fact-Finder:** It is recommended that any matters previously and tentatively agreed to by the Parties regarding issues not specifically addressed above in this Report and Recommendations of the Fact Finder be deemed incorporated by reference. Those tentative agreements are as follows and copies are attached:

Article 21.4  
Article 23  
Article 24.1 (relating to pension pickup language deletion)  
Article 26.1  
Article 38.15  
Article 40.5  
Article 43.4  
Article 46.4  
Article 48.1

In addition, at the Fact Finding Hearing, the parties agreed to maintain the current language of Article 37 - Insurance, effective through 2014. The parties also agreed that effective January 1, 2015, the Agreement, at Article 37 – Insurance, will include the language recommended in *In the Matter of the Fact Finding Between IAFF Local 109 and The City of Newark, Ohio, SERB Case # 13-MED-10-1401, Fact finder Robert G. Stein, dated February 5, 2014* with respect to the IAFF Local 109 collective bargaining agreement’s Article 27 - Hospitalization, Medical and Life Insurance. It is therefore recommended that the following language (italics) recommended by Fact Finder Stein with respect to the IAFF Local 109 collective bargaining agreement’s Article 27 - Hospitalization, Medical and Life Insurance be included in the Agreement at Article 37 - Insurance, with the provisions to be renumbered as appropriate:

**ARTICLE 27** **HOSPITALIZATION, MEDICAL AND LIFE INSURANCE**

➤ *Maintain the Current Language of Article 27 for 2014*

Section 27.1. *The Employer shall provide group medical insurance coverage for each employee and dependents in accordance with the schedule of benefits attached or one mutually agreed to by a majority of the members of the Health Care Committee (HCC). Approval being subject to ratification by each bargaining unit participating in the committee, in order to limit the increase in health care premium costs for the City to 7% or less from one year to the next. (e.g. the 2015 premium to be paid by the City is 7% or less than the 2014 level and the 2016 level increase to be paid by the City is 7% or less than the 2015 level). If the City’s premium for health care coverage is projected to exceed 7% from one year to the next, the HCC shall make recommendations to maintain a 7% or less increase in the premium. If this does not occur (or if one of the bargaining units fails to approve a change that limits the City’s premium costs to 7%), Section 27.2 (A) below shall become effective the first year the HCC is unable to maintain a 7% cap on the increase in health care costs to the City from one year to the next.*

Section 27.2. *The Employer, Union and employees acknowledge the importance of and must engage in mutual efforts to control the cost of health insurance care. As premium rates increase over the course of this Agreement, the parties agree to meet and discuss the increase in premium cost for the purpose of discussing alternatives to maintain cost control, including, but not limited to alternate insurance coverage or alternate means of providing coverage. During the period of the Agreement the HCC shall meet regularly in order to monitor and control health care costs. However should the premium cost for health insurance for the City from year to year be projected to exceed 7%, and the HCC fails to act or said modifications in the plan are not ratified by one of the bargaining units to lower costs premium costs to a level of 7% or less, the following sections shall be become effective:*

*A. The City may implement plan design modifications to the City plan which measures may be*

*made to maintain, reduce, or limit increases in premiums and/or costs providing coverage. The City agrees to provide the Union the opportunity to review and respond to the City's modifications to the City plan and the Union agrees to provide alternative measures to maintain, reduce or limit increases in premiums and/or costs of providing coverage. Among the measures the City may implement and the parties may discuss will be wellness programs, screening programs, tobacco use programs and well as other measures either the City or Union may identify in discussions regarding the City's plan for health insurance coverage.*

*The Union understands and agrees that any increase in the premium rates for health, medical, and related insurance premiums shall be a factor considered in the total economic proposals for successive negotiations. Any rate increases which may be implemented during the period of this Agreement shall also remain subject to the wage negotiations of subsequent Agreements.*

*It is further agreed and understood that during the term of this Agreement that individual carriers/providers may, through no fault of the City, Union, or employees cease coverage. Should such occur, any employee adversely affected shall be given the opportunity to enroll with an alternative carrier with the appropriate premium rates subject to the premium rate applied herein or to waive coverage and receive an appropriate pro-rata amount of the waiver of coverage payment.*

*The parties agree and understand that the health care coverage is subject to the Affordable Care Act (ACA). Should any provision of the City's plan conflict with the ACA, or other applicable laws or regulations, those provisions of the City plan will be immediately suspended and if a resolution cannot be determined and implemented within 60 days of the suspension such provisions of the City plan will no longer be in effect. In this event the City agrees, if the Union requests, to discuss the impact of those provisions of the City plan determined to be in conflict with the ACA or other laws or regulations. The Union agrees that it will present alternative measures with cost impact a consideration.*

**Section 27.3. Contributions.** *The parties agree that contributions to the premiums for health insurance provided by this Article will be paid as follows:*

- City share of monthly premium                      88% \**
- Employee share of monthly premium            12% pre-tax contribution \**
- \*Or what the parties agree to through the HCC*

*The employee's premium contribution (individual, double or family) will be deducted bi-weekly in equal increments.*

**Section 27.4. Non-Pay Status.** *An employee in a non-pay status due to their own health related condition or that of an immediate family member will be required to pay the employee's share of the monthly health insurance premium.*

*An employee in a non-pay status for reasons other than a health related condition, will be responsible for one hundred percent (100%)*

*Platoon Employees*

48 – 95 hours	=	one quarter of the total monthly premium
96 – 143 hours	=	one half of the total monthly premium
144 – 191 hours	=	three quarters of the total monthly premium
192 plus hours	=	one hundred percent of the total monthly premium

*Staff Employees*

40 – 79 hours	=	one quarter of the total monthly premium
80 – 119 hours	=	one half of the total monthly premium
120 – 159 hours	=	three quarters of the total monthly premium
160 plus hours	=	one hundred percent of the total monthly premium

**Section 27.5. Waiver of Coverage.** *An employee who provided satisfactory proof of medical coverage under another employer sponsored insurance plan may waive medical coverage. An employee who waives coverage will receive up to the following maximum:*

Waiver of medical insurance	\$3000.00
Waiver of dental insurance	\$ 150.00
Waiver of both (dental & medical)	\$3150.00

*Payments will be made in December of the calendar year coverage is waived. Payments for new hires, terminations, etc., will be prorated.*

*City employees married to one another are not eligible for the waiver stipend.*

**Section 27.6. Life & Dental Insurance.** *Each bargaining unit employee shall receive, at the expense of the City, a thirty thousand dollar (\$30,000) term life insurance policy containing a double indemnity clause covering accidental death benefits. The City will make available dental insurance coverage for employees at the City's expense and double or family coverage at the expense of the employee.*

**Section 27.7. Labor-Management Committee.** *Employer and Union agree to establish a joint Labor Management Health Care Committee (HCC) to study medical insurance benefits plans and actively manage benefit levels and health care premium costs.*

**Section 27.8. Spousal Coverage.** *If the spouse of a City employee is employed and is eligible for employer sponsored health coverage with said employer, he/she must enroll in the particular health plan. If the spouse cannot obtain coverage through his or her employer until a certain date or open enrollment period, the spouse will be covered under the City's plan until he or she can obtain coverage through his or her employer. The spouse must provide documentation to the City that he/she is not eligible for coverage. Employees whose spouses have health insurance coverage through an employer, which coverage does not provide the same level of benefits as the City plan, are entitled to \$1077 in a flexible spending account or reduced premium, at the City discretion. Spouses can also remain on the City's plan under secondary coverage.*

**Section 27.8. Spousal Coverage.** *If the spouse of a City employee is employed and is eligible for employer sponsored health coverage with said employer, he/she must enroll in that particular health plan. If the spouse cannot obtain coverage through his or her employer until a certain date or open enrollment period; the spouse will be covered under the City's plan until he or she can obtain coverage through his or her employer. The spouse must provide documentation to the City that he/she is not eligible for coverage. Employees whose spouses have health insurance coverage through an employer, which coverage does not provide the same level of benefits as the City plan are entitled to \$1077 in a flexible spending account or reduced premium, at the City's discretion. Spouses can also remain on the City's plan under secondary coverage.*

It is also recommended that all language not addressed in these recommendations, and not so incorporated by reference, will stay the same in the new Agreement.

This concludes the Report and the Recommendation of the Fact Finder.

The Parties are respectfully reminded that, pursuant to Ohio Revised Code Section 4117.14 (C) (6) (a), any mistakes in the language recommended by the Fact Finder are correctable by the mutual agreement of the parties.

Pittsburgh, PA  
May 28, 2014

Respectfully submitted,



**Michael D. McDowell**  
**Fact Finder**

### **CERTIFICATE OF SERVICE**

This is to certify that per the agreement of the Parties, an electronic copy in .pdf format of the duly executed original of the foregoing was emailed this 28th day of May, 2014, to Jonathan Downes, Esq. at [jjd@zrlaw.com](mailto:jjd@zrlaw.com) and to Chuck Choate, Esq., at [cchoate@neo.rr.com](mailto:cchoate@neo.rr.com).



**Michael D. McDowell**  
**Fact-Finder**

In the Matter of Fact-Finding Between the City of Newark (Ohio) and Fraternal Order of Police/Ohio Labor Council, Inc., Case Nos. 2013-MED-10-1292, 2013-MED-10-1293

2014-2016 Agreement Between City of Newark and Licking County FOP, Lodge #127						
ADDENDUM B						
	2014 HOURLY 1/1/14	2014 ANNUAL 1/1/14	2015 HOURLY 1/1/15	2015 ANNUAL 1/1/15	2016 HOURLY 1/1/16	2016 ANNUAL 1/1/16
<b>PATROLMAN</b>						
NON-CERTIFIED	\$16.8497	\$35,047.3456	\$17.0182	\$35,397.8191	\$17.2735	\$35,928.7863
0-11 MONTHS	\$19.0662	\$39,657.6312	\$19.2569	\$40,054.2075	\$19.5457	\$40,655.0206
12-23 MONTHS	\$21.4150	\$44,543.1578	\$21.6292	\$44,988.5894	\$21.9536	\$45,663.4182
24-35 MONTHS	\$24.2269	\$50,392.0276	\$24.4692	\$50,895.9479	\$24.8362	\$51,659.3871
36 PLUS MONTHS	\$25.2966	\$52,616.8918	\$25.5496	\$53,143.0607	\$25.9328	\$53,940.2066
10 YEARS PLUS	\$26.3221	\$54,750.0091	\$26.5853	\$55,297.5092	\$26.9841	\$56,126.9718
<b>SERGEANTS</b>						
	\$31.0601	\$64,605.0107	\$31.3707	\$65,251.0608	\$31.8413	\$66,229.8267
<b>CAPTAINS</b>						
	\$37.2721	\$77,526.0128	\$37.6448	\$78,301.2729	\$38.2095	\$79,475.7920

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**CHANGE TO:**

**ARTICLE 21**

**Section 21.4 Tenure**

C. Test Construction. All promotional tests will be comprised of the following:

1. Written exam that includes at minimum one hundred (100) multiple choice questions.
2. An assessment center process consisting of up to four components including both written and oral exercises.
3. Candidates must score a minimum of 70% on the written exam in order to participate in the assessment center process.

The scale for the complete test is 200 points. The written multiple-choice section will consist of 100 points. The assessment center process will be valued at 100 points.

After all sections are completed and scored, seniority and educational points will be granted. All dates utilized for seniority points will be calculated from the date of the written test. They will be calculated as stated below:

1. Four (4) years of completed service, four (4) points will be applied
2. Each completed year after the above, 6/10 (.6) points per year will be applied to the maximum of ten (10) points.
3. Each completed year in rank, one (1) point up to five (5) points maximum will be applied.

All educational degrees obtained from an accredited university and utilized for educational points will be calculated from the date of written test. They will be calculated as stated below:

1. Associate Degree – a total of one-half (1/2) point will be applied.
2. Bachelor Degree – a total of one (1) point will be applied.
3. Master Degree – a total of one and a half (1.5) points will be applied.

In case of a tie, department seniority (time/date) of hire will be utilized.

D. Reference/Study Material.

1. The standard list of reference material will include:
  - a. General Orders for the Division of Police,
  - b. Newark Division of Police Search and Seizure Manual, and
  - c. FOP/City of Newark Collective Bargaining Agreement.

Promotional tests will be created to include the above material. This material will be utilized to construct at least eighty percent (80%) of the written exam. This material will not be "open book."

2. The balance of the written exam can be constructed utilizing two (2) additional references. The Director of Public Safety will select these references. The additional reference materials will be "open book" during testing. The "open book" section of the test shall be weighted at twenty (20) percent of the written exam.

*Handwritten note: "RAW Enforcement Related"*

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*Handwritten signatures and dates: "18 OCT. 13" and "10/18/13"*

*Handwritten signature and date: "19 OCT 13"*

**CURRENT LANGUAGE**

**ARTICLE 23**

**COPIES OF AGREEMENT**

The City will provide each employee, at no cost to the employee, a copy of this Agreement within sixty (60) days of the date this Agreement is ratified by Council.

**CHANGE TO:**

The City will provide an electronic copy of this agreement within sixty (60) days of the date this Agreement is ratified by Council.

For the FOP



17 OCT 13

For the City



**ARTICLE 23  
COPIES OF AGREEMENT**

The City will provide each employee, at no cost to the employee, a copy of this Agreement within sixty (60) days of the date this Agreement is ratified by Council.

**ARTICLE 24  
WAGES**

**Section 24.1. Wage Table** The wage scales for the employees covered by this Agreement are attached as Addendum B.

All months listed above are inclusive. Except, a newly hired police officer who has been certified by the Ohio Peace Officers Training Council and has at least two (2) years of law enforcement experience may be compensated upon hire at any rate of pay up to the 24-35 months hourly rate as determined by the City.

Sergeant Wages.

1. Sergeants shall serve a promotional probationary period of six (6) months. Failure of probation shall result in the Sergeant being returned to patrol ranking.

Sergeant Rank Differential shall be as listed below;

January 1, 2010	18% above top step patrol wages
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Captain Wages

Captain rank differential shall be 20% above the top step Sergeant wage scale.

~~The City shall pick up 100% of the employee's contribution to the Police and Fire Pension Fund from January 1, 2011 thru June 25, 2011. The City shall pick up 0% of the employee's contribution to the Police and Fire Pension fund from June 26, 2011 and continuing forward.~~

*T.A. [Signature] 26 OCT 13*

**Section 24.2. Field Training Officers Pay**

Any Bargaining Unit Member covered by this CBA who is assigned to serve as a Field Training Officer and while performing in those duties shall receive Field Training Officers pay that will be equal to the current sergeant's rate of pay according to the CBA. While in an overtime status the FTO will be compensated at the same rate of pay. (Sergeant's time and one half).

**Section 24.3. Instructor Pay**

Any Bargaining Unit Member who, 1), is recognized as a state certified instructor or a certified instructor in a specific discipline 2) is assigned in advance by the division to conduct

*DAB [Signature]*      *[Signature]*      *DECE [Signature]*      *[Signature]*

**ARTICLE 26**

**HOURS OF WORK, OVERTIME, STAND-BY PAY AND OVERTIME CALL-IN**

**Section 26.1. Hours of Work**

The standard workweek for all sworn officers of the Division of Police shall be forty (40) hours. The standard workday for officers assigned to uniform patrol and the detective bureau shall be ten (10) hours with an officer having three consecutive days off each workweek.

The current shifts for the City of Newark's Police Department, ~~Patrol Division Bureau~~ are as follows:

- 1st Shift        0730 hours to 1730 hours
- 2nd Shift        1700 hours to 0300 hours
- 3rd Shift        2200 hours to 0800 hours

Subject to providing the FOP/OLC with two (2) calendar weeks notice in writing, any change in the scheduled beginning times and ending times of the listed shifts shall be made by the Chief of Police, except where Article 33 applies or for just cause. The starting times of the shifts will not be rescheduled more than one (1) hour before or after the present starting times of the shifts. Rescheduling of shifts will not be used for the primary purpose of avoiding the application of overtime. There will be no rotating shifts for employees covered by this Agreement and during the term of this Agreement.

There will be a sign-up for the ~~Patrol Division Bureau~~ every six (6) months by seniority. Captains (s)-will sign-up first, then Sergeants, and finally Patrol Officers. The new signups will take effect the first

full pay period after January 1st and the first full pay period after July 1st each year. Bargaining unit members will make their choices, by seniority, during the three (3) weeks prior to the new sign-up taking effect. Bargaining unit members may submit their shift choices in writing or may, on their own time, report to the station and view the patrol ~~Division~~ Bureau Team assignments before selecting an open slot. The Chief reserves the right to place bargaining unit members with less than one (1) year of service or bargaining unit members currently on probation or any other member(s) for "just cause". If the Officer Coordinator is assigned to the Patrol ~~Division~~ Bureau, the Patrol Team that he/she selects shall have an additional bargaining unit member assigned, above the approved strength. This is to ensure proper manning of that Team, due to the Officer Coordinators other duties that frequently interferes with being present on a regular basis.

Officers assigned as full-time canine handlers shall have a workweek consisting of thirty-six (36) hours based on four (4) consecutive nine (9) hour days and three consecutive days off. Canine Handlers will receive ten (10) hours pay for each nine (9) hour workday to compensate for the weekly off-duty care and maintenance of the animals in their custody. It is the intent of this provision to provide full compensation as required by the Fair Labor Standards Act to those officers who are responsible for the weekly care, feeding, exercise and boarding of a City-owned dog for all off-duty hours so engaged.

Employees assigned to specialty positions will work forty (40) hours in a workweek but shall work a flex schedule to accomplish their assigned task. The use of the flex schedule is to avoid any unnecessary overtime that can be eliminated by flexing the schedule. These specialty assignments include the following; Community Policing, D.A.R.E. Officers, School Resource Officers, Officers assigned to the Drug Task Force and Captains. Officers assigned to these positions shall have at least two consecutive days off in a workweek. The City agrees to try and rotate overtime opportunities as per policy and procedure in effect as of January 1, 2003. When any sworn officer, excepting the Chief, is required to perform in any active pay status for more than forty (40) hours in any calendar week or more than eight (8) or ten (10) hours in one day, depending on shift assigned, he or she will be compensated for such over-time performance as follows:

For the FOP



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7 OCT 13

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For the City



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**Section 38.13. Conversion of Sick Time.**

Each member who has accrued more than 480 hours of sick time may, in November of each year, convert sick time to cash at the rate of three hours pay for each four of sick leave being converted, according to the following schedule:

<u>Accrual of sick leave used during previous 12 months</u>	<u>Number of hours which may be converted at 75%</u>
NO USAGE	120 hours
1 hour to 19 hours	100 hours
20 hours to 49 hours	80 hours
50 hours or more	0 hours

Any amounts cashed in shall be added to the employee's normal paycheck. This amount shall be paid the first pay period of December.

**Section 38.14. Payment upon Death.**

When a member dies in the line of duty, all unused sick leave shall be paid in a lump sum to the surviving spouse or, if there is no spouse, to the estate of the deceased. When a member dies while in paid status with the City, but other than in the line of duty, sick leave shall be paid in a lump sum to the surviving spouse or, if there is no spouse, to the estate of the deceased according to the limitations of the retirement provisions contained in 38.12, above.

**Section 38.15. Abuse.** Employees intentionally failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave with intent to defraud will result in dismissal and refund of salary wage paid.

All employees are expected to maintain a satisfactory record of attendance. Employees who use excessive amounts of sick leave, abuse sick leave, or demonstrate a pattern of abuse shall be subject to appropriate disciplinary action. Employees who have 4 (four) incidents of unscheduled call-offs in a rolling 6 (six) month period will meet and be counseled by the immediate supervisor. During this counseling session the employee will be advised that they must produce a physician's statement for all succeeding incidents in the next 12 (twelve) months or the employee will not be paid for the period of absence. While on sick leave, an employee is expected to be at home unless on a medical-related errand or physician's appointment.

**Section 38.16. False Claims**

An Employee who is guilty of submitting a false claim for benefits is subject to disciplinary action by the City and/or the withholding of benefit payments. An Employee who is on injury or sick leave, and at the same time is working for another employer is deemed prima facie to have made such a false claim for benefits unless prior to such work for another he obtains from his appointing authority written approval to do so.

Without A Doctor's Supp

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18 OCT. 13

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18 OCT 13  
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W. V.  
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The provisions of this Article shall be uniformly administered throughout the City and it shall be responsibility of the Officer of Director of Human Resources to implement this Article to accomplish such purpose.

Employees who have been in the bargaining unit since before April 29, 1998 may take up to twelve weeks of unpaid leave in each year due to the serious medical condition (as defined in the FMLA) of a significant other.

Section 40.5 Bereavement Leave

The Chief will grant ~~three (3)~~ working days of paid leave for attending the funeral of an employee's spouse, parents, grandparents, parent-in-laws, children, stepchildren, employee's brothers, sister, half-brothers, half-sisters or any other relatives living in the same household or other person who stands in place of a parent.

MEMORIAL SERVICE

The Chief will grant ~~two (2)~~ working days of paid leave for attending the funeral of an employee's grandparents-in-law, grandchildren, brothers-in-law, sisters-in-law, spouse's siblings, and siblings' spouses.

MEMORIAL SERVICE

Bereavement leave shall be paid to all employees provided the employees notifies the officer in charge on duty in advance of the leave and identifies the relationship of the deceased. Bereavement leave does not have to be taken in consecutive days, but should be used within seven (7) days of the first use.

~~Bereavement leave in excess of three (3) working days shall be approved in advance by the Chief in writing and shall be charged to the Employee's accrued sick leave, comp time, vacation, or counted as leave without pay. The use of sick leave for bereavement leave shall not count against any bargaining unit member under Article 38, Section 38.13 Conversion of Sick Time.~~

Section 40.6 Religious Leave

Employees of the Division of Police may be granted leave without pay to attend religious observances so long as request is approved in by the employee's Division Head and Department Head. Religious observances are defined as those special observances (not to include the ordinary weekly observances) which morally require an employee's attendance at his church, synagogue, or other place of worship. Religious observance leave shall be limited to the actual hours necessary to attend the observance.

**ARTICLE 43  
MISCELLANEOUS**

Section 43.1. Composition. The Police Division of the City shall be composed of a Chief of Police and such other officers and personnel as Council shall, from time to time, determine.

AP  
BC  
7 OCT 13

Mike Burack 10/07/13

CURRENT LANGUAGE

ARTICLE 43

Section 43.4. Duty Weapon Purchase.

Upon a bargaining unit member's retirement with at least 25 years of police service, (including any military or service buy back as defined by the Police and Fire pension Board) or a disability retirement due to a work related injury (other than psychological) that bargaining unit member shall be permitted to purchase his/her regular duty weapon for the sum of One Dollar (\$1.00).

CHANGE TO:

Upon a bargaining unit member completing at least 15 years of police service with the City of Newark (including any military or service buy back as defined by the Police and Fire Pension Board) or a disability retirement due to a work related injury (other than psychological), that bargaining unit member upon leaving employment of the City of Newark shall be permitted to purchase his/her regular duty weapon and their Division-issued badge for the sum of One Dollar (\$1.00).

T.A.  
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18 OCT 13

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18 OCT 13

D + C.V.  
18 OCT. 13

[Signature]  
Duke Buschick  
W. W.

[Signature]  
10/17/13

[Signature]

**Section 46.4. Incentive Program**

**Members who are rated as Level 1 or Level 2 in every phase of the Physical Fitness Test are eligible to participate in the Incentive Program. The Incentive Program has two (2) components:**

**A. Compensatory Time Incentive. Members who are rated as Level 1 or Level 2, in all phases of the PFT will receive incentives as follows:**

**1. Members who are rated as least Level 1 in all phases of the PFT will receive incentive of five (5) hours of compensatory time added to their compensatory time balance.**

**2. Members who are rated at least Level 2 in all phases of the PFT will receive incentive of ten (10) hours of compensatory time added to their compensatory time balance.**

**3. Members are eligible to receive only the incentive set forth in (1) or (2), but not both.**

**4. Members who qualify will be eligible to receive incentives after 07-01-2004. Members must re-qualify for incentives each year by applying for participation and meeting Level 1 or Level 2 standards in all phases.**

**B. Incentive Recognition Awards. Members who are rated in Level 1 or Level**

2 in all phases of the PFT will be eligible to receive and wear the following awards:

1. Members who are rated at least Level 1 in each phase of the PFT will receive the Physical Fitness Award Uniform Ribbon.

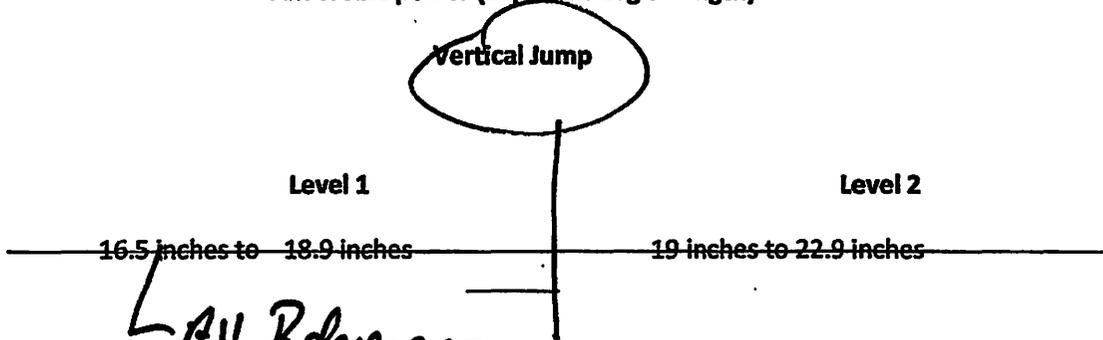
2. Members who are rated at least Level 2 in each phase of the PFT will receive a Physical Fitness Award Uniform Ribbon with a star, to denote superior fitness levels.

3. Members receiving the incentive awards set forth in (1) and (2) above

shall be eligible to wear said awards until the member fails to participate in the program the following year, or fails to meet the Level 1 or Level 2 standards in all phases during the PFT in the following year.

Chart A

Anaerobic power (Explosive Leg Strength)



All References  
Remember/Refer to.

For the FOP

[Signature]

7 Oct 13

For the City

[Signature] 10/12/13

Incentive Program

Members who are rated as Level 1 or Level 2 in every phase of the Physical Fitness Test are eligible to participate in the Incentive Program. The Incentive Program has two (2) components:

A. **Compensatory Time Incentive.** Members who are rated as Level 1 or Level 2, in all phases of the PFT will receive incentives as follows:

1. Members who are rated as least Level 1 in all phases of the PFT will receive incentive of five (5) hours of compensatory time added to their compensatory time balance.
2. Members who are rated at least Level 2 in all phases of the PFT will receive incentive of ten (10) hours of compensatory time added to their compensatory time balance.
3. Members are eligible to receive only the incentive set forth in (1) or (2), but not both.
4. Members who qualify will be eligible to receive incentives after 07-01-2004. Members must re-qualify for incentives each year by applying for participation and meeting Level 1 or Level 2 standards in all phases.

B. **Incentive Recognition Awards.** Members who are rated in Level 1 or Level 2 in all phases of the PFT will be eligible to receive and wear the following awards:

1. Members who are rated at least Level 1 in each phase of the PFT will receive the Physical Fitness Award Uniform Ribbon.
2. Members who are rated at least Level 2 in each phase of the PFT will receive a Physical Fitness Award Uniform Ribbon with a star, to denote superior fitness levels.
3. Members receiving the incentive awards set forth in (1) and (2) above shall be eligible to wear said awards until the member fails to participate in the program the following year, or fails to meet the Level 1 or Level 2 standards in all phases during the PFT in the following year.

Chart A

Anaerobic power (Explosive Leg Strength)

Vertical Jump

<u>Level 1</u>	<u>Level 2</u>
<u>16.5 inches to 18.9 inches</u>	<u>19 inches to 22.9 inches</u>

City of Newark and Licking County FOP, Lodge #127

**Chart B<sup>A</sup>**  
**Muscular Endurance (Core Body)**  
**One Minute Sit Ups**

Level 1	Level 2
27 to 32	33 to 39

**Chart C<sup>B</sup>**  
**Anaerobic Power (Sprinting Ability)**  
**300 Meter Run**

Level 1	Level 2
60 seconds to 68 seconds	48.1 seconds to 59.9 seconds

**Chart D<sup>C</sup>**  
**Muscular Endurance (Upper Body)**  
**Maximum Push Up, One Minute Time Limit**

Level 1	Level 2
18 to 23	24 to 37

**Chart E<sup>D</sup>**  
**Aerobic Capacity (Cardio Respiratory)**  
**1.5 Mile Run (min/sec)**

Level 1	Level 2
13:54.1 to 15:20	11:38.1 to 13:54

The suggested test battery is as follows:

- ~~vertical jump~~
- one minute sit up
- 300 meter run
- maximum push up one minute
- 1.5 mile run

The procedure and order for testing is recommended as follows:

1. ~~Warm up for 5 minutes, perform the Vertical Jump test and rest for 2 minutes~~
2. Perform the One Minute Sit Up test and rest for 5 to 10 minutes.
3. Perform the 300 Meter Run, then rest for 5 to 10 minutes
4. Perform the Maximum Push Up test, then rest for 5 to 15 minutes.

ARTICLE 48  
DURATION OF AGREEMENT

**Section 48.1.** This Agreement shall be effective as of January 1, 2011, and shall remain in full force and effect until December 31, 2013. *2014*

**Section 48.2.** If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent. *2016*

**Section 48.3.** The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the employer and the F.O.P. for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agree that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement except as required by Ohio law.

*De C. C.*  
18 OCT. 13

*T.A.*  
18 OCT 13

*10/18/13*  
*Steve Burk*

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*Stung*

*Paul R...*  
17/OCT 13